
White vs. Prigmore.

WHITE vs. PRIGMORE.

MOTION FOR NEW TRIAL: *When error in overruling, not considered.*

A motion for a new trial is not a part of the record unless made so by bill of exceptions, and unless so made, error in the inferior court, in overruling such motion, will not be considered in this court.

APPEAL from *Grant* Circuit Court.

Hon. JOHN WHYTOCK, Circuit Judge.

J. A. Williams, for appellant.

A. H. Garland, for appellee.

McCLURE, C. J. Prigmore sued White for the fees of the office of recorder of Jefferson county, from the 6th of April, 1871, to March, 1872, claiming the sum of \$1,816, as fees received by White, during the time White deprived Prigmore of the possession, fees and emoluments of the office of recorder. A change of venue was had to Grant county, and a special judge elected to try the cause. At the hearing, the jury found for Prigmore, and assessed his damages at \$1,110, and judgment for that sum was rendered in his favor.

White made a motion for a new trial, which was overruled, and he appealed to this court.

Whether the court below committed error, it is impossible for us to say, as there is no bill of exceptions presented with the record. In the transcript filed in this court, we find what purports to be a copy of a motion for a new trial, in which a new trial is asked upon these grounds:

First. Because the court erred in sustaining the demurrer of plaintiff to paragraph VI of defendant's answer.

Second. Because the verdict is contrary to law and unsupported by evidence.

Third. Because the court erred in overruling the defendant's motion for a continuance filed in said case.

Whether these are the grounds on which a motion for a new trial was based, we have no means of ascertaining. The law recognizes but one method by which the judgment of an inferior court can be reviewed for error committed in overruling a motion for a new trial, and that is by a bill of exceptions, authenticated by the signature of the judge, or in the manner prescribed by the statute.

A motion for a new trial does not become a part of the record, unless it is so made by a bill of exceptions; for this reason we decline to consider either the second or third grounds for a new trial.

We have examined paragraph six of defendant's answer, and we find no error in sustaining the demurrer thereto. The judgment of the circuit court is, in all things, affirmed.
